

AMENDED IN ASSEMBLY JUNE 18, 2007

AMENDED IN SENATE APRIL 10, 2007

SENATE BILL

No. 661

Introduced by Senator Maldonado

February 23, 2007

An act to ~~amend Section 655.5 of, to~~ add Section 655.7 to, and to repeal Section 655.6 of, the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, as amended, Maldonado. Healing arts: anatomic pathology services.

Existing law makes it unlawful for ~~healing arts practitioners, clinical laboratories, or health facilities when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or the laboratory or under his, her, or its direct supervision, unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the services.~~ Existing law also makes it unlawful for healing arts practitioners to charge, bill, or otherwise solicit payment from any patient, client, customer, or 3rd-party payer for cytologic services relating to the examination of gynecologic slides if those services were not actually rendered by the practitioner or under his or her direct supervision. Existing law also requires clinical laboratories performing cytologic examinations of gynecologic slides to directly bill either the patient or the responsible 3rd-party payer for the cytology services rendered by the laboratory, except as specified. Under existing law, a violation of these provisions is a crime.

This bill would ~~exempt billings by a healing arts practitioner for anatomic pathology services from the prohibition against charging, billing, or otherwise soliciting payment for a clinical laboratory service not rendered by, or under the supervision of, the practitioner, and would delete the prohibition against a healing arts practitioner charging, billing, or otherwise soliciting payment for cytological services relating to the examination of gynecologic slides. The bill would instead prohibit a healing arts practitioner from charging, billing, or otherwise soliciting payment for anatomic pathology services, as defined, if those services were not actually rendered by the practitioner or under his or her direct supervision, except as specified. The bill would also require a clinical laboratory and a physician and surgeon providing anatomic pathology services to directly bill the patient, the responsible 3rd-party payer, the clinical laboratory that referred sent the sample for specialized testing, if certain requirements are met, or the requesting hospital or clinic, or the governmental agency or its specified public or private agent, agency, or organization responsible for payment for those services, except as specified.~~

Because a violation of these provisions would be punishable as a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 655.5 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~655.5. (a) It is unlawful for any person licensed under this~~
4 ~~division or under any initiative act referred to in this division, or~~
5 ~~any clinical laboratory, or any health facility when billing for a~~
6 ~~clinical laboratory of the facility, to charge, bill, or otherwise solicit~~
7 ~~payment from any patient, client, or customer for any clinical~~
8 ~~laboratory service not actually rendered by the person or clinical~~
9 ~~laboratory or under his, her or its direct supervision unless the~~
10 ~~patient, client, or customer is apprised at the first time of the~~

1 charge, billing, or solicitation of the name, address, and charges
2 of the clinical laboratory performing the service. The first such
3 written charge, bill, or other solicitation of payment shall separately
4 set forth the name, address, and charges of the clinical laboratory
5 concerned and shall clearly show whether or not the charge is
6 included in the total of the account, bill, or charge. This subdivision
7 shall be satisfied if the required disclosures are made to the
8 third-party payer of the patient, client, or customer. If the patient
9 is responsible for submitting the bill for the charges to the
10 third-party payer, the bill provided to the patient for that purpose
11 shall include the disclosures required by this section. This
12 subdivision shall not apply to a clinical laboratory of a health
13 facility or a health facility when billing for a clinical laboratory of
14 the facility nor to a person licensed under this division or under
15 any initiative act referred to in this division if the standardized
16 billing form used by the facility or person requires a summary
17 entry for all clinical laboratory charges. For purposes of this
18 subdivision, "health facility" has the same meaning as defined in
19 Section 1250 of the Health and Safety Code.

20 (b) Commencing July 1, 1994, a clinical laboratory shall provide
21 to each of its referring providers, upon request, a schedule of fees
22 for services provided to patients of the referring provider. The
23 schedule shall be provided within two working days after the
24 clinical laboratory receives the request. For the purposes of this
25 subdivision, a "referring provider" means any provider who has
26 referred a patient to the clinical laboratory in the preceding
27 six-month period. Commencing July 1, 1994, a clinical laboratory
28 that provides a list of laboratory services to a referring provider
29 or to a potential referring provider shall include a schedule of fees
30 for the laboratory services listed.

31 (c) It is also unlawful for any person licensed under this division
32 or under any initiative act referred to in this division to charge
33 additional charges for any clinical laboratory service that is not
34 actually rendered by the licensee to the patient and itemized in the
35 charge, bill, or other solicitation of payment. This section shall not
36 be construed to prohibit any of the following:

37 (1) Any itemized charge for any service actually rendered to
38 the patient by the licensee.

39 (2) Any summary charge for services actually rendered to a
40 patient by a health facility, as defined in Section 1250 of the Health

1 and Safety Code, or by a person licensed under this division or
2 under any initiative act referred to in this division if the
3 standardized billing form used by the facility or person requires a
4 summary entry for all clinical laboratory charges.

5 (d) As used in this section, the term “any person licensed under
6 this division” includes a person licensed under paragraph (1) of
7 subdivision (a) of Section 1265, all wholly owned subsidiaries of
8 the person, a parent company that wholly owns the person, and
9 any subsidiaries wholly owned by the same parent that wholly
10 owns the person. “Wholly owned” means ownership directly or
11 through one or more subsidiaries. This section shall not apply to
12 billings by a person licensed under paragraph (1) of subdivision
13 (a) of Section 1265 when the person licensed under paragraph (1)
14 of subdivision (a) of Section 1265 bills for services performed by
15 any laboratory owned or operated by the person licensed under
16 paragraph (1) of subdivision (a) of Section 1265.

17 (e) (1) This section shall not apply to any person or clinical
18 laboratory who or which contracts directly with a health care
19 service plan licensed pursuant to Section 1349 of the Health and
20 Safety Code, if the services are to be provided to members of the
21 plan on a prepaid basis and without additional charge or liability
22 on account thereof.

23 (2) This section shall not apply to billing by healing arts
24 practitioners for anatomic pathology services, as defined in Section
25 655.7.

26 (f) A violation of this section is a public offense and is
27 punishable upon a first conviction by imprisonment in the county
28 jail for not more than one year, or by imprisonment in the state
29 prison, or by a fine not exceeding ten thousand dollars (\$10,000);
30 or by both that imprisonment and fine. A second or subsequent
31 conviction is punishable by imprisonment in the state prison.

32 (g) (1) Notwithstanding subdivision (f), a violation of this
33 section by a physician and surgeon for a first offense shall be
34 subject to the exclusive remedy of reprimand by the Medical Board
35 of California if the transaction that is the subject of the violation
36 involves a charge for a clinical laboratory service that is less than
37 the charge would have been if the clinical laboratory providing
38 the service billed a patient, client, or customer directly for the
39 clinical laboratory service, and if that clinical laboratory charge is

1 less than the charge listed in the clinical laboratory's schedule of
2 fees pursuant to subdivision (b).

3 ~~(2) Nothing in this subdivision shall be construed to permit a~~
4 ~~physician and surgeon to charge more than he or she was charged~~
5 ~~for the laboratory service by the clinical laboratory providing the~~
6 ~~service unless the additional charge is for service actually rendered~~
7 ~~by the physician and surgeon to the patient.~~

8 SEC. 2.

9 SECTION 1. Section 655.6 of the Business and Professions
10 Code is repealed.

11 SEC. 3.

12 SEC. 2. Section 655.7 is added to the Business and Professions
13 Code, to read:

14 655.7. (a) (1) A person licensed under this division or under
15 an initiative act referred to in this division shall not charge, bill,
16 or otherwise solicit payment, directly or indirectly, for anatomic
17 pathology services, if those services were not actually rendered
18 by that person or under his or her direct supervision.

19 (2) Notwithstanding paragraph (1), a clinical laboratory may
20 seek payment for anatomic pathology services if it is required to
21 send a sample to another clinical laboratory for specialized testing
22 or services only if that clinical laboratory has performed ~~technical~~
23 ~~or professional services~~ *the services described in subdivision (e)*
24 related to that sample.

25 (3) Notwithstanding paragraph (1), a clinical laboratory may
26 bill for anatomic pathology services that were performed by an
27 affiliated clinical laboratory, *directly or through arrangements*
28 *with a pathologist in compliance with Article 18 (commencing*
29 *with Section 2400) of Chapter 5.* For purposes of this section, an
30 "affiliated clinical laboratory" means a clinical laboratory that is
31 wholly owned by, is the parent company of, or is under common
32 ownership with, the clinical laboratory billing for the anatomic
33 pathology services. For purposes of this section, "wholly owned"
34 means 100 percent ownership directly or through one or more
35 subsidiaries, and "common ownership" means 100 percent
36 ownership by a common parent company.

37 (b) A clinical laboratory or a physician and surgeon performing
38 anatomic pathology services shall seek payment for those services
39 solely from the following:

40 (1) The patient.

1 (2) The insurer, health care service plan, or other third-party
2 payer responsible for payment of the services.

3 (3) The hospital, public health clinic, or nonprofit health clinic
4 ordering the services.

5 (4) The clinical laboratory that sent the sample, ~~other than a~~
6 ~~laboratory of a physician and surgeon or the laboratory of a group~~
7 ~~practice of physicians and surgeons that did not perform the~~
8 ~~technical or professional component of the anatomic pathology~~
9 ~~service for which payment is sought.~~ *for specialized testing or*
10 *services only if that clinical laboratory has performed the services*
11 *described in subdivision (e) related to that sample.*

12 (5) A governmental agency or its specified public or private
13 agent, agency, or organization responsible for payment of the
14 services.

15 (c) No person is required to reimburse a person licensed under
16 this division or under an initiative act referred to in this division
17 for a charge or claim made in violation of this section.

18 (d) This section shall not apply to any of the following:

19 (1) A person who, or a clinical laboratory that, contracts directly
20 with a health care service plan licensed pursuant to Section 1349
21 of the Health and Safety Code, if services are to be provided to
22 enrollees of the plan on a prepaid basis.

23 (2) A person who, or a clinic that, provides anatomic pathology
24 services without charge to the patient, or on a sliding scale payment
25 basis if the patient's charge for services is determined by the
26 patient's ability to pay.

27 (3) Health care programs operated by public entities, including,
28 but not limited to, colleges and universities.

29 (4) Health care programs operated by private educational
30 institutions to serve the health care needs of their students.

31 (5) A person who, or a clinic that, contracts with an employer
32 to provide medical services to its employees if the anatomic
33 pathology services relating to the examination of gynecologic
34 slides are provided under the contract.

35 (e) For the purposes of this section, the term "anatomic
36 pathology services" means any of the following:

37 (1) Histopathology or surgical pathology, meaning the gross
38 and microscopic examination ~~and or~~ histologic processing of organ
39 tissue performed by a physician and surgeon or under the
40 supervision of a physician and surgeon.

1 (2) Cytopathology, meaning the examination of cells from fluids,
2 aspirates, washings, brushings, or smears, including the Pap test
3 examination, performed by a physician and surgeon or under the
4 supervision of a physician and surgeon.

5 (3) Hematology, meaning the microscopic evaluation of bone
6 marrow aspirates and biopsies performed by a physician and
7 surgeon, or under the supervision of a physician and surgeon, and
8 peripheral blood smears when the attending or treating physician
9 and surgeon or technologist requests that a blood smear be
10 reviewed by a pathologist.

11 (4) Subcellular pathology and molecular pathology, *when*
12 *required to be reviewed by a pathologist.*

13 (5) ~~Blood-Transfusion medicine or blood banking services~~
14 performed by a pathologist.

15 ~~SEC. 2.~~

16 SEC. 3. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.